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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,496	12/21/2001	Gilles Rubinstenn	05725.0980-00	4463
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER				
BORISSOV, IGOR N				
ART UNIT		PAPER NUMBER		
3628				
MAIL DATE		DELIVERY MODE		
06/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/024,496

Applicant(s)

RUBINSTENN ET AL.

Examiner

Igor N. Borissov

Art Unit

3628

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-50.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Igor N. Borissov/
Primary Examiner, Art Unit 3628

Continuation of 11, does NOT place the application in condition for allowance because: In response to Applicant's argument that Claim Rejection under 101 has to be withdrawn, the examiner points out that process claims 1-11, 13-16, 18-25, 32-39, 41, 43, 44, 46-50 fail the second branch of the machine-or-transformation test as described in *Bilski*, 545 F.3d at 961-62, to determine whether the subject matter of are patent-eligible under 35 U.S.C. § 101, because in claims 1-11, 13-16, 18-25, 32-39, 41, 43, 44, 46-50 nothing must be transformed, not even data, when the steps are construed as encompassing no more than receiving information and providing information. The "generating" steps do not necessarily require transformation of data by a machine. Therefore, the process of claims 1-11, 13-16, 18-25, 32-39, 41, 43, 44, 46-50 fail the machine-or-transformation test and is not patent-eligible under 35 U.S.C. § 101.

In response to Applicant's request to clarify the status of claims 48-50, it is noted that claims 48-50 erroneously omitted from the statement of the 35 USC 103. Therefore, as mentioned in the explanation of the claim rejection at pages 16-17 of the Final Office Action claims 48-50 are rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Maloney in view of Fox et al.

In response to Applicant's argument that Applicants traverse the rejections under 35 U.S.C. §§ 102(a) and 103(a) for at least the reasons discussed in Applicants' Appeal Brief filed on February 3, 2006, Pursuant to M.P.E.P. § 706.07(h), Applicants' arguments in the Appeal Brief and Reply Brief regarding the rejections under 35 U.S.C. §§ 102(a) and 103(a) are incorporated herein by reference, the examiner stipulates that Applicants' arguments presented in the Appeal Brief filed on February 3, 2006, and Reply Brief filed on June 12, 2006, are fully addressed in the Examiner's Answer to Appeal Brief of 10/30/2008.